

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS, *et al.*,

Plaintiffs,

v.

Case No. 18-cv-00068

UNITED STATES OF AMERICA, *et al.*,

Defendants,

and

KARLA PEREZ, *et al.*,

STATE OF NEW JERSEY,

Defendant-Intervenors.

**FEDERAL DEFENDANTS' NOTICE OF
ISSUANCE OF NOTICE OF PROPOSED RULEMAKING**

On March 26, 2021, while the parties' motions for summary judgment were pending, the Federal Defendants notified the Court that the Department of Homeland Security "intends to issue a Notice of Proposed Rulemaking (NPRM) proposing a new regulation concerning Deferred Action for Childhood Arrivals (DACA), consistent with the President's Memorandum of January 20, 2021." ECF No. 563 (citing ECF No. 550-1).

On July 16, 2021, the Court granted in part Plaintiffs' Motion for Summary Judgment, ECF No. 575, and issued a permanent injunction, ECF No. 576. The Court stayed the injunction as applied to individuals who obtained DACA on or before the date of the injunction, allowing DHS to continue to grant renewal requests from these existing DACA recipients. The injunction also permits the Federal Defendants to continue to accept but not grant requests from initial DACA requestors.

Today, the Department of Homeland Security's NPRM on Deferred Action for Childhood Arrivals was posted for public inspection. *See* <https://www.federalregister.gov/public-inspection/2021-20898/deferred-action-for-childhood-arrivals> (last visited Sept. 27, 2021). The proposed rule is scheduled to be published in the Federal Register on September 28, 2021.

The DACA NPRM includes a sixty-day public comment period, after which the Department of Homeland Security will review and carefully consider all properly submitted comments prior to issuing any final rule. As the NPRM makes clear (*see, e.g.*, pp. 77-78), the Department remains committed to assessing all alternatives to the DACA policy and takes seriously those potential alternatives suggested by this Court. This rulemaking process thus requests comment on the concerns identified by the Court.

Also today, the Fifth Circuit Court of Appeals issued a briefing schedule requiring the government's opening brief on November 8, 2021. Because the rulemaking process will likely

result in a final rule that supersedes the 2012 DACA memorandum that the Court considered, and because the final rule may moot or otherwise affect some or all of the claims in this case, the Federal Defendants are considering requesting that the Fifth Circuit hold their appeal in abeyance pending the issuance of a final rule, which may substantially alter the posture of this case.

Dated: September 27, 2021

BRIAN M. BOYNTON
Acting Assistant Attorney General
Civil Division

AUGUST E. FLENTJE
Special Counsel
Civil Division

WILLIAM C. PEACHEY
Director, Office of Immigration Litigation
District Court Section

Respectfully submitted,

JEFFREY S. ROBINS
Attorney-in-Charge
Deputy Director

/s/ James J. Walker

JAMES J. WALKER
Senior Litigation Counsel
U.S. Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Phone: (202) 532-4468
Fax: (202) 305-7000
Email: james.walker3@usdoj.gov

Attorneys for Federal Defendants

CERTIFICATE OF SERVICE

I certify that on September 27, 2021, this document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ James J. Walker

JAMES J. WALKER